



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,002	03/26/2004	Brian E. Healy	J-3949	7734
28165 7590 04/24/2009 S.C. JOHNSON & SON, INC. 1525 HOWE STREET RACINE, WI 53403-2236				
EXAMINER				
JACYNIA J CASIMER				
ART UNIT		PAPER NUMBER		
3754				
MAIL DATE		DELIVERY MODE		
04/24/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/810,002

**Applicant(s)**

HEALY ET AL.

**Examiner**

J. Casimer Jacyna

**Art Unit**

3754

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 3, 5, 6, 17, 19-35, 40, 43-46 and 48-53 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5, 6, 17, 27, 30-35 and 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-26, 28, 29, 43-46 and 51-53 is/are rejected.
- 7) ☒ Claim(s) 48-50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. Claims 3, 5, 6, 17, 27, 30-35 and 40 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 2/7/2007.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 19-26, 28, 29 and 51-53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 19 and 51 are drawn solely to an actuator cap as stated on line 1 of these claims. With respect to claim 19, the last line of claim 19 now defines the claimed actuator cap to be placed in a housing wherein the housing is apparently not part of the actuator cap. However, lines 9-11 of claim 19 define the portions of the actuator cap as engaging an internal surface of the housing and define the actuator cap with respect to the housing structure wherein the housing is inferentially included as part of the claimed combination. Since the actuator cap positively engages the housing and is defined in terms of the housing structure it is not possible to determine the metes and bounds of the claimed actuator cap invention without the housing. However, since the housing is being excluded as part of the claimed combination the metes and bounds of the claimed invention are subject to interpretation and are not definite. Likewise with claim 51, a container and a housing are positively called for in the last four lines of the claim, however, the claim is drawn only to the actuator cap and the last line of claim 51 also defines the actuator cap with

the container being disposed within the housing. The last line of claim 51 identifies the actuator cap to be a subcombination that is used with a container and placed within an overall housing. Since line 1 states that only the actuator cap is being claimed, it would appear from line 1 that the container and the housing are not part of the claimed combination. However, the last four lines of claim 51 clearly attempt to include the container and the housing as part of the claimed combination. Also, lines 9-11 of claim 51 define the actuator cap in terms of the housing and call for the cap to engage the housing as in claim 19. Again, it is not certain if the combination of the actuator cap, the container and the housing is being claimed or only the actuator cap as stated on line 1 wherein the metes and bounds of the claimed invention are subject to interpretation and are not definite.

4. Claims 43-46 are rejected under 35 U.S.C. 102(b) as being anticipated by Batistelli 3,473,700. Batistelli discloses an actuator cap 10 for a container 28 including a main wall 12, 31, 13, 14 and 46 that varies in cross section and has a vertical axial dimension, a flexible actuator member 35 that horizontally extends transversely from 36 to 32 as seen in figure 3 with an outer peripheral surface located in channels 32 and that does not extend past the greatest lateral extent of the main wall as is the outer surface of the arms at the ends of pointers 20 and 21 in figure 3 but does extend beyond a portion of the main wall at as is the inner wall forming channel 32, and an upright portion as is the vertical flange at the end of pointer 30 in figure 1 that is curved between 18 and 30 and includes aperture 36 that secures actuator 35 and is thereby adjacent to the actuator 35 and prevents inadvertent actuation and includes a gusset as

is the horizontal flange at the end of pointer 30 in figure 3 that is bent or arcuate between 18 and 30 in figure 1 and is on the bottom surface of upright portion which is facing the interior of the device and is thereby an internal surface.

5. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.
6. Claims 48-50 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Casimer Jacyna whose telephone number is 571-272-4889. The examiner can normally be reached on Mon. thru Fri. 9AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Casimer Jacyna/  
Primary Examiner, Art Unit 3754